Calendar No. 666

93d CONGRESS 2d Session

# 5.2747

[Report No. 93-690]

### IN THE SENATE OF THE UNITED STATES

NOVEMBER 27, 1973

Mr. WILLIAMS (for himself, Mr. JAVITS, Mr. KENNEDY, and Mr. RIBICOFF) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

#### FEBRUARY 22, 1974

Reported, under authority of the order of the Senate of February 21 (legislative day, February 19), 1974, by Mr. Williams, with amendments

[Omit the part struck through and insert the part printed in italic]

## A BILL

- To amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, to expand the coverage of the Act, and for other purposes.
  - 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SHORT TITLE; REFERENCES TO ACT
- 4 SECTION 1. (a) This title Act may be cited as the
- 5 "Fair Labor Standards Amendments of 1973" 1974".
- 6 (b) Unless otherwise specified, whenever in this title
- 7 Act an amendment or repeal is expressed in terms of an

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- 1 The exemption set forth in the preceding sentence shall not
- 2 include employees subject to the civil service laws of a State
- 3 government, governmental agency, or political subdivision."
- 4 (5) Section 16 of such Act is amended by striking the
- 5 figure "\$3,000,000", and inserting in lieu thereof
- 6 "\$5,000,000".
- 7 (b) (1) The Age Discrimination in Employment Act
- 8 of 1967 is amended by redesignating sections 15 and 16,
- 9 and all references thereto, as section 16 and section 17,
- 10 respectively.
- 11 (2) The Age Discrimination in Employment Act of
- 12 1967 is further amended by adding immediately after section
- 13 14 the following new section:
- 14 "NONDISORIMINATION ON ACCOUNT OF AGE IN FEDERAL
- 15 GOVERNMENT EMPLOYMENT
- "Sec. 15. (a) All personnel actions affecting employees
- 17 or applicants for employment (except with regard to aliens
- 18 employed outside the limits of the United States) in military
- 19 departments as defined in section 102 of title 5, United
- 20 States Code, in executive agencies as defined in section 105
- 21 of title 5, United States Code (including employees and ap-
- 22 plicants for employment who are paid from nonappropriated
- 23 funds), in the United States Postal Service and the Postal
- Rate Commission, in those units in the government of the Approved For Release 2002/01/23: CIA-RDP75B00380R000800030021-2
- 25 District of Columbia having positions in the competitive

- service, and in those units of the legislative and judicial branches of the Federal Government having positions in the  $\mathbf{2}$ competitive service, and in the Library of Congress shall be made free from any discrimination based on age. "(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regula-10 tions, orders, and instructions as it deems necessary and ap-11 propriate to carry out its responsibilities under this section. 12 The Civil Service Commission shall— 13 "(1) be responsible for the review and evaluation 14 of the operation of all agency programs designed to 15 carry out the policy of this section, periodically obtain-16 ing and publishing (on at least a semiannual basis) 17 progress reports from each such department, agency, or 18 19 unit; "(2) consult with and solicit the recommendations 20 of interested individuals, groups, and organizations relat-21 ing to nondiscrimination in employment on account of 22
- 24 "(3) provide for the acceptance and processing Approved For Release 2002/01/23: CIA-RDP75B00380R000800030021-2

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age; and

of complaints of discrimination in Federal employment
2 on account of age.
3 The head of each such department, agency, or unit shall
4 comply with such rules, regulations, orders, and instruc-
5 tions of the Civil Service Commission which shall include
6 a provision that an employee or applicant for employment
7 shall be notified of any final action taken on any complaint
8 of discrimination filed by him thereunder. Reasonable ex-
9 emptions to the provisions of this section may be estab-
10 lished by the Commission but only when the Commission
11 has established a maximum age requirement on the basis
of a determination that age is a bona fide occupational quali-
13 fication necessary to the performance of the duties of the
14 position. With respect to employment in the Library of
15 Congress, authorities granted in this subsection to the Civil
16 Service Commission shall be exercised by the Librarian of
17 Congress.
"(c) Any persons aggrieved may bring a civil action in
19 any Federal district court of competent jurisdiction for such
20 legal or equitable relief as will effectuate the purposes of
21 this Act.
"(d) When the individual has not filed a complaint
23 concerning age discrimination with the Commission, no civil
24 action may be commenced by any individual under this
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- less than thirty days' notice of an intent to file such action.
- 2 Such notice shall be filed within one hundred and eighty days
- 3 after the alleged unlawful practice occurred. Upon receiving
- 4 a notice of intent to sue, the Commission shall promptly
- 5 notify all persons named therein as prospective defendants
- 6 in the action and take any appropriate action to assure the
- 7 elimination of any unlawful practice.
- 8 "(e) Nothing contained in this section shall relieve any
- 9 Government agency or official of the responsibility to assure
- 10 mondiscrimination on account of age in employment as re-
- 11 quired under any provision of Federal law."
- 12 EFFECTIVE DATE
- 13 SEC. 29. (a) Except as otherwise specifically provided,
- 14 the amendments made by this Act shall take effect on the
- 15 first day of the first full month which begins after the date
- 16 of the enactment of this Act.
- (b) Notwithstanding subsection (a), on and after the
- 18 date of the enactment of this Act the Secretary of Labor is
- 19 authorized to prescribe necessary rules, regulations, and
- 20 orders with regard to the amendments made by this Act.

d Minimum Wages" Bulletin artment of Labor in 1970, is a aip between minimum wages tates that the various studies een youth unemployment and major findings in this report:

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(with respect to foreign sonable to conclude that it factors than rapid ecohological shifts, national bility rates, and the relamilar confluence of these might well have similar ess of the wage structure.

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ing previous raises in the connection between minimum

following statement on wages k Force to the Secretary of in America. This Task Force Miott L. Richardson's request:

ges constitute the major ars, wages undoubtedly ion. Certainly, a level of te standard of living is it point, workers tend to nity"—i.e. in relationship w workers are making to y are receiving.

The Committee is convinced that establishing subminimum rates for any group of workers unrelated to the work they perform is discriminatory. The youth wage is rejected because discrimination in employment is wrong and the Committee wants no part in legislating discrimination.

NONDISCRIMINATION ON ACCOUNT OF AGE IN GOVERNMENT EMPLOYMENT

S. 2747 amends the Age Discrimination in Employment Act of 1967 to include within the scope of its coverage Federal, State, and local government employees (other than elected officials and certain aides not covered by civil service), and to expand coverage from employers with 25 or more employees to employers with 20 or more employees. The annual authorization of appropriations ceiling was raised from \$3 million to \$5 million The Age Discrimination in Employment Act prohibits discrimination in employment on the basis of age in matters on the of hiring, job retention, compensation, and other terms, conditions, or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65. The Administration for the ages of 40 and 65. has also proposed such an extension of coverage for State and local government employees. The amendment is a logical extension of the Committee's decision to extend FLSA coverage to Federal, State, and local government employees. The Senate agreed to this extension by a vote of 86-0 in 1972.

The ADEA prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65. The Committee recognizes that the omission of government workers

from the Age Discrimination in Employment Act did not represent a conscious decision by the Congress to limit the ADEA to employment in the private sector. It reflects the fact, that in 1967, when ADEA was enacted, most government employees were outside the scope of the FLSA and the Wage Hour and Public Contracts Divisions of the Department of Labor, which enforces the Fair Labor Standards Act, were assigned responsibility for enforcing the Age Discrimination in Employment Act.

As the President said in his message of March 23, 1972, supporting such an extension of coverage under the ADEA, "Discrimination based on age—what some people call 'age-ism'—can be as great an evil in our society as discrimination based on race or religion or any other characteristic which ignores a person's unique status as an individual and treats him or her as a member of some arbitrarily-defined group. Especially in the employment field, discrimination based on age is cruel and self-defeating; it destroys the spirit of those who want to work and it denies the Nation the contribution they could make if they were working."

The Committee was impressed by a press release issued by then Secretary of Labor Hodgson on February 4, 1972 which was headed: "Voluntary Compliance with Age Discrimination Laws Opens Up 1 Million Jobs, Secretary of Labor Tells Congress". The release states that informal talks with some 30.000 employers dispelled "preconceived notions or myths" about the older worker.

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The Committee expects that expanded coverage under the Age Discrimination in Employment law will remove discriminatory barriers against employment of older workers in government jobs at the Federal and local government levels as it has and continues to do in private employment.

RECOVERY OF BACK WAGES

Section 26 of the Committee bill amends section 16(c) to authorize the Secretary of Labor not only to bring suit to recover unpaid minimum wages or overtime compensation, a right which the Secretary currently has, but also to sue for an equal amount of liquidated damages without requiring a written request from an employee. The addition of liquidated damages is a necessary penalty to assure compliance with the Fair Labor Standards Act. Currently, all that is required of the employer is the payment of wages that should have been paid in the first place, without any penalty for violating the Act. This is not a deterrent to future violations.

This section would also allow the Secretary of Labor to bring suit even though the suit might involve issues of law that have not been finally settled by the courts. At the present time, many of the protections that are written into the Act are not being extended to workers because of the current restrictions on the Secretary in bringing suits in areas that have not been finally settled by the courts. The Act places the primary responsibility for the enforcement of the Act on the Secretary of Labor; the Secretary should have the right to bring suits

directly in order to resolve issues of law.

The Committee also acted on an amendment to Section 16(b) of the Act to make clear the right of individuals employed by state and local governments and political subdivisions to bring private actions to enforce their rights and recover back wages under this Act. This amendment is necessitated by the decision of the U.S. Supreme Court in Missouri, et al. (April, 1973) which held that Congress in extending coverage under the 1966 amendments to school and hospital employees in state and local governments did not explicitly provide the individual a right of action in the Federal courts although the Secretary of Labor was authorized to bring such suits. In addition the Committee included an amendment to the Portal to Portal Act of 1947 which would preserve existing actions brought by private individuals which would otherwise be barred by the statute of limitations as a result of the April decision.

Both amendments were included at the request and recommendation

of the Administration and the Secretary of Labor.

#### ENFORCEMENT

The Committee is concerned that the Employment Standards Administration of the Department of Labor which now has responsibility for administering the Fair Labor Standards Act appears to be downgrading enforcement of this Act. The Committee wishes to reemphasize that it expects the Department to maintain a vigorous enforcement program under this Act; that coverage should be interpreted broadly; and that every effort should be made to insure that those employees who have been the victims of violations of this Act are made whole.

The Committee is aware that Act is a significant achievement of forcement effort designed to bring with the new standards as quickly

The Committee recognizes that that decisions must be made as a to maximize the effectiveness of workers obtain the full benefits g

As a first step, this involves: of their rights and responsibilitilations which grow out of igne having conducted an intensive in Committee recommends that full-cover back wages due are the only

pliance with the FLSA.

The Committee is concerned the books for 35 years and which has payments are still running at aboutee is not unfamiliar with the fact that there is a high probability to covered when only 3 percent of a gated each year and that this attituded high level of violations, percent decline in investigations is Department's announced shift in conciliation efforts and away fro purposes of the Act and severely conate labor conditions detrimental standard of living necessary for the being of workers."

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To assure that every cover tection of the Fair Labor Sta cational and informational p with their rights and employ that was instituted several year 1972. Increased utilization of ing Education) program when to acquaint businessmen with was promoted. This included s sessions with industry officials ers were encourage to review general guidance and assistance were not in compliance, includ. found due, and to report the r employers participated in var compliance program. In additards Administration particip with employers, employment and others which, on the basis provided, resulted in changes achieve compliance. Also in 19